

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

**AMERICAN GNC CORPORATION,**

**Plaintiff,**

**v.**

**ZTE (USA) Inc. and  
ZTE (TX) Inc.,**

**Defendants.**

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**Case No. 4:17-cv-620-ALM-KPJ**

**PUBLIC REDACTED VERSION**

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**Joint Motion To Stay All Deadlines**

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Plaintiff American GNC Corporation (“AGNC”) and Defendants ZTE (USA) Inc. and ZTE (TX) Inc. (collectively, “ZTE”) jointly move this Court to stay all deadlines in this case for 60 days, including without limitation the May 22 claim construction hearing, June 6 opening expert report deadline, and October 2018 jury selection date. The parties seek the stay to avoid waste of judicial resources in light of the extraordinary circumstances related to the Department of Commerce Bureau of Industry and Security (“BIS”) Order as to ZTE Corporation, which was issued on April 15, 2018 (“BIS Order”), attached as Exhibit A. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

████████████████████ In light of these circumstances, the parties request that the Court stay all deadlines in this case.<sup>1</sup>

There are significant deadlines approaching in this case, including the claim construction hearing scheduled for May 22, 2018 and opening expert reports due on June 6. *See* Amended Scheduling Order at Dkt. No. 85 & Dkt. No. 116. Based on these approaching deadlines it is anticipated that the Court, the parties, and the technical advisor will be required to spend considerable resources regarding this case in the coming weeks, including preparing for and conducting the claim construction hearing and the substantial expense of preparing expert reports.

The parties agree that the stay order in this case should not preclude the Federal Circuit from issuing its order on ZTE (USA) Inc.'s mandamus petition regarding venue that it filed with the Federal Circuit on November 30, 2017. *See In re: ZTE (USA), Inc.*, Case No. 18-113. ██████████

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In addition to the Federal Circuit's ruling in the mandamus proceeding, the parties agree that third-party discovery in this case should not be stayed. AGNC has sought discovery from ZTE's subcomponent suppliers through subpoenas since September 2017 but during these nine months these subcomponent suppliers have not cooperated. AGNC continues to seek third-party

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<sup>1</sup> ZTE submits that the mandamus proceeding currently pending at the Federal Circuit on the issue of improper venue provides another, independent, basis for staying this case. Indeed, Chief Judge Gilstrap has recently stayed two unrelated cases pending the Federal Circuit's decision on venue in *In re: ZTE (USA), Inc.*, Case No. 18-113 (Fed. Cir.). *See Blitzsafe Texas LLC v. Mitsubishi Elec. Corp.*, Case No. 2:17-cv-00430-JRG at Dkt. # 133; *Corydoras Technologies LLC v. ZTE Corporation and ZTE (USA) Inc.*, Case No. 2:18-cv-00127-JRG at Dkt. # 13.

discovery and has already filed a motion to compel discovery from one of the third parties. AGNC anticipates that motions to compel may be required against at least two additional third parties in other jurisdictions. It is also possible that international discovery through the time-consuming Hague Convention procedures may be needed. Given the length of time that AGNC anticipates will be required to complete third party discovery, the parties submit that third party discovery should not be stayed.

### **Conclusion**

In light of the foregoing extraordinary facts and circumstances, the parties request a temporary stay of the deadlines in this case for 60 days, except with respect to the Federal Circuit's order on the mandamus issue and third-party discovery. Either side may ask the Court to lift the stay for any reason.

May 11, 2018

<p>Respectfully submitted,</p> <p><u>/s/ Alison Aubry Richards</u>  David Berten  IL Bar # 6200898 dberten@giplg.com  Alison Aubry Richards  IL Bar # 6285669 arichards@giplg.com  Alexander Debski  IL Bar # 6305715 adebski@giplg.com  Global IP Law Group, LLC  55 West Monroe Street Suite 3400  Chicago, IL 60603  T: (312) 241-1500  F: (312) 241-1522</p> <p><b><i>Attorneys for Plaintiff American GNC Corporation</i></b></p>	<p>Respectfully submitted,</p> <p><u>/s/ Charles M. McMahon</u>  Charles M. McMahon  Brian A. Jones  Casey Campbell  McDERMOTT WILL &amp; EMERY LLP  444 West Lake Street  Chicago, Illinois 60606  (312) 372-2000</p> <p>Jay H. Reiziss  Michael S. Nadel  Natalie A. Bennett  McDERMOTT WILL &amp; EMERY LLP  500 North Capitol Street, N.W.  Washington, D.C. 20001  (202) 758-8000</p>
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**CERTIFICATE OF CONFERENCE AND  
COMPLIANCE WITH LOCAL RULE CV-7(h)**

On May 11, 2018, counsel for AGNC, David Berten and Alison Richards, discussed the issues in this motion by phone, with counsel for ZTE, Charlie McMahon. In a follow-up email, Mr. McMahon confirmed that ZTE would join the above motion.

/s/ Alison Aubry Richards  
Counsel for plaintiff AGNC

**CERTIFICATE OF AUTHORITY TO FILE UNDER SEAL**

This joint motion contains confidential information concerning the parties' settlement negotiations, their interpretation of the BIS Denial Order, and the impact of the BIS Denial Order on this case and the parties' ability to settle the case. Pursuant to the protective order entered in the case, the parties have filed this joint motion under seal.

/s/ Alison Aubry Richards  
Counsel for plaintiff AGNC

**CERTIFICATE OF SERVICE**

The undersigned certifies that this document was served via electronic mail on May 11, 2018 to the following counsel for ZTE:

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/s/ Alison Aubry Richards

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